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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. JOHNNY SEGARRA, Defendant and Appellant.	B289100 (Los Angeles County Super. Ct. No. VA143694)

APPEAL from a judgment of the Superior Court of Los Angeles County. Laura F. Priver, Judge. Reversed and remanded.

Jeanine G. Strong, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant

Attorney General, David Madeo and Stephanie C. Santoro, Deputy Attorneys General, for Plaintiff and Respondent.

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In a single day in January 2017, Johnny Segarra (defendant) approached three different people and tried to take their cars; one time he failed, but the other two times he succeeded. While driving one of the cars, he led law enforcement on a chase through the streets of Huntington Park. At trial, defendant testified to committing the carjacking-related crimes and to evading, but explained that his activities that day were at the behest of the National Security Agency (NSA), the Central Intelligence Agency (CIA), the Federal Bureau of Investigation (FBI), the Department of Homeland Security or some other "unknown governmental agency." A jury acquitted him of the carjacking-related crimes but convicted him of felony evasion. On appeal, defendant argues that the trial court erred in (1) denying his motion for discovery pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*), and (2) excluding his post-arrest statement to law enforcement that his actions that day were part of a "training test exercise" by a "clandestine . . . branch of the law." We conclude that the trial court properly denied the *Pitchess* motion, but abused its discretion in excluding defendant's post-arrest statement. Because this statement was critical to the credibility of defendant's mental defect defense, its exclusion was prejudicial and requires us to vacate his felony evasion conviction and remand for further proceedings.

FACTS AND PROCEDURAL HISTORY

I. Facts

On January 4, 2017, defendant tried to carjack three different cars.

Just before lunchtime, he approached a man sitting in a VW Jetta and suddenly flopped his body onto the car's hood, rolled his eyes back in his head, and started breathing hard. The car's owner thought defendant was "having a heart attack or some kind of mental problem," and got out to provide assistance. When he did, defendant stood up, darted into the driver's seat and closed the door. Defendant drove away. Defendant eventually drove the Jetta to a parking lot outside of a Food 4 Less and abandoned it.

A little after lunchtime, defendant approached a woman sitting in a Honda CRV in the Food 4 Less parking lot. He walked up to the driver's window, put his hand in his pocket to make it look like he had a gun, and told the owner to hand over her keys and that, "Today you're gonna do a good deed." Almost immediately after the owner handed over her keys, a male stranger walked up, asked the owner "What's wrong?" and ordered defendant to return her keys. Defendant did so, and walked away.

A few hours later, defendant approached a woman sitting in a Kia Soul in a Carl's Jr. parking lot. He walked up to the driver's window, again put his hand in his pocket to mimic a gun, and told the owner to "get out of the car" or else he would "shoot [her] in the" "fucking head." She complied, and defendant drove away in the car.

The Kia's driver called 911, and a marked sheriff's patrol car saw the Kia, turned on its lights and siren, and tried to pull the car over. Defendant did not stop. Instead, he led the police on a five- to ten-mile pursuit through the streets of Huntington Park; during the chase, defendant drove into oncoming traffic three times and drove through several traffic signals and stop

signs without slowing. Defendant eventually jumped out of the car and bolted on foot; the foot chase ended with his arrest.

II. Procedural Background

The People charged defendant with two counts of carjacking (Pen. Code, § 215)[1] for the Jetta and Kia, one count of attempted carjacking (§§ 215, 664, subd. (a)) for the Honda CRV, and one count of felony evasion of the police (Veh. Code, § 2800.2, subd. (a)).[2] The People further alleged that defendant's 2016 burglary conviction constituted a prior "strike" under our Three Strikes Law (§§ 667, subds. (b)-(j), 1170.12, subds. (a)-(d)) as well as a prior "serious" felony conviction (§ 667, subd. (a)).

The matter proceeded to a jury trial.

Defendant testified in his own defense. Specifically, defendant testified that "U.S. Cyber Security Officials," the NSA, the CIA, the Department of Homeland Security, the FBI or another "unknown governmental agency" were "directing" him through a variety of different Internet websites, cell phone apps, and homeless people. On January 4, defendant further explained, those agencies decided to "test" him by evaluating his ability to obtain a car and retrieve his friend Francesca. Taking his cue from car horns, defendant tried to obtain a car by carjacking (so as not to leave a "paper trail"); all of the three car owners defendant approached, however, faked their distress

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1 All further statutory references are to the Penal Code unless otherwise indicated.

2 The People filed an Amended Information, but it is not part of the record. From the parties' briefs, we infer that the charges and pertinent allegations remained the same.

because they were "part of the operation." Defendant recounted that he evaded the sheriffs while driving the last car because he did not want to compromise his mission to save Francesca and because he was unsure whether the sheriffs also knew about the operation. Defendant testified that he began having these delusions after he started taking methamphetamines a few years earlier.

The trial court instructed the jury on the charged crimes of carjacking, attempted carjacking and felony evasion, as well as the lesser included offense of misdemeanor evasion. The court also instructed the jury on the defenses of mental impairment and voluntary intoxication.

The jury convicted defendant of felony evasion, but acquitted him of both carjacking crimes and of attempted carjacking. In a separate, bifurcated hearing, the trial court found defendant's prior conviction to be true.

The trial court sentenced defendant to a four-year sentence, calculated as a mid-term sentence of two years, doubled due to the prior strike.

Defendant filed this timely appeal.

DISCUSSION

I. *Pitchess* Motion

A. *Pertinent facts*

Prior to trial, defendant filed a motion to obtain the personnel records and citizen complaints regarding four sheriff's deputies—the two officers in the patrol car that pursued him, and the two officers who arrived as back up and led the foot chase. Along with his motion, defendant's attorney filed a declaration indicating her belief that defendant's foot was injured once he got out of the carjacked Kia Soul when one of the patrol cars ran over

his foot; that the officers' reports all indicated that defendant had injured himself tripping on a sidewalk; and that the officers' perjury in their reports warranted disclosure of records pertaining to the "fabrication of evidence" and "use of excessive force."

At the hearing on the motion, the trial court noted that defendant's motion "set forth an alternative scenario for why [defendant] was limping," but found that this scenario was not "material to the charges."

B. *Analysis*

Defendant argues that the trial court erred in denying his *Pitchess* motion. We review such denials for an abuse of discretion. (*People v. Hughes* (2002) 27 Cal.4th 287, 330.)

The "personnel records" of "peace" and "custodial officers," as well as "complaints by members of the public," are conditionally privileged under California law. (§§ 832.5, 832.7, 832.8.) This conditional privilege is overcome only if the party seeking them follows the procedures first articulated in *Pitchess*, *supra*, 11 Cal.3d 531, and later codified in Evidence Code section 1043 through 1047. Under these procedures, a court must find "good cause for the discovery or disclosure"—that is, a showing that the agency from which the records and complaints are sought possesses them and, more relevant here, a showing that the records and complaints are "material[] . . . to the subject matter involved in the pending litigation." (Evid. Code, § 1043, subd. (b)(3).) To establish materiality, the requesting party must (1) set forth a "specific" and "plausible" "factual scenario of officer misconduct," and (2) must establish both how the information sought is "similar" to the misconduct alleged in the pending action and, as is critical here, how the information would support

a defense or negate the People's case. (*Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1021, 1025-1027 (*Warrick*); *California Highway Patrol v. Superior Court* (2000) 84 Cal.App.4th 1010, 1021 [italics omitted].)

The trial court did not abuse its discretion in denying defendant's *Pitchess* motion because the records he sought did not "propose a defense or defenses to the pending charges" and thus were not "material." (*Eulloqui v. Superior Court* (2010) 181 Cal.App.4th 1055, 1063 (*Eulloqui*).) That is because the sole alleged dishonesty by the four sheriff's deputies pertained solely to how defendant injured his foot, an event that happened *after* the charged crimes (that is, the car-jackings, attempted carjacking and felony evasion) were completed and thus could not provide a defense to those crimes. Although defendant's alternate scenario posits that the officers made post-offense lies, such lies are not material within the meaning of *Pitchess* unless they also provide a defense to the charged crime(s): "To hold that this type of 'the officer lied and will do so again' allegation constitutes a plausible factual scenario of officer misconduct warranting review of confidential personnel records would abrogate the strong ring of protection the Legislature and courts have erected around peace officer personnel records." (*Id.* at p. 1069; *Giovanni B. v. Superior Court* (2007) 152 Cal.App.4th 312, 319, 321 [allegations that officers' "*other* observations concerning suspected criminal activity were false" not "material"]; see generally *Warrick*, *supra*, 35 Cal.4th at p. 1021 ["Th[e] specificity requirement excludes requests for officer information that are irrelevant to the pending charges."]; cf. *People v. Hustead* (1999) 74 Cal.App.4th 410, 416-417 [allegations that officers lied about

defendant's driving are "material" to defense to an evasion charge].)

Defendant offers two arguments in response.

First, he argues that the trial court abused its discretion because it applied the wrong legal standard when it indicated, during the hearing, that defendant's "alternate scenario" did not "rise to the level of a defense to the charges." Just minutes later, the court stated that the same "alternative scenario" was not "material." The court's use of an alternative phrasing to get at the correct legal standard—a lack of materiality due to the alleged misconduct not constituting a defense to the charges—does not invalidate the court's ruling where, as here, the court also used the proper phrasing.

Second, defendant contends that the officers' lies regarding how defendant injured his foot are still material because they occurred before *other* officers' lied about whether defendant discussed the charged crimes en route from the scene of the arrest to the hospital to the police station. We need not entertain this contention because defendant did not include these facts in his alternative factual scenario in his *Pitchess* motion; he cannot do so for the first time on appeal. (See *People v. Cervantes* (2004) 118 Cal.App.4th 162, 176 ["We normally review a trial court's ruling based on the facts known to the trial court at the time of the ruling."].) Defendant suggests that he would have made these additional allegations in a supplemental *Pitchess* motion except that the trial court effectively prohibited the filing of such a motion by declaring it would be untimely. The record does not support this suggestion, as it shows only that the trial court refused to grant a trial continuance to allow defendant to file a

supplemental *Pitchess* motion; the court said only that the motion may be untimely, but did not definitively rule on that point.

II. Exclusion of Post-Arrest Statement

A. *Pertinent facts*

Soon after his arrest, defendant spoke with Huntington Park police officers. After being advised of his *Miranda* rights, defendant told the officers that he would "like to exercise [his] right to remain silent." The officers ignored his request and continued to ask him questions. In response to those questions, defendant explained that a "branch of the law" had "taken interest in [him]"; that it was his "job . . . to go and retrieve" a woman; that the "clandestine . . . branch of the law" put him through a "training test exercise"; that he needed a car as part of the test and carjacking one was the only way not to create a record of the cars he was using; that the carjacking victims were "taking part in th[e] training exercise" and were "very good actor[s]"; and that no one was hurt during the chase because the other drivers on the road were "in on the whole thing" and "were moving out of the way."

In response to an objection by the People, the trial court ruled that defendant's post-arrest statement was "hearsay" because it was "offer[ed]" for the "truth"—namely, because the defendant "want[s] the[jury] to believe the veracity of the statements." In so ruling, the court rejected defendant's argument that the statement was offered merely as circumstantial evidence of his state of mind (and hence not hearsay). The court went on to find that the post-arrest statement was inadmissible hearsay because neither the declaration against penal interest nor prior consistent statement exceptions to the hearsay rule applied. The court nevertheless

made clear—on multiple occasions—that the People would not be "allow[ed]" to make any "blanket statement" or otherwise "argue" that defendant "had a year to think about" a mental defect defense.

B. *Analysis*

Defendant argues that the trial court erred in excluding his post-arrest statement and that this exclusion prejudiced him. We review evidentiary rulings for an abuse of discretion (*People v. Powell* (2018) 5 Cal.5th 921, 961), an erroneous ruling is prejudicial if, absent that error, it is reasonably probable that the defendant would have obtained a more favorable verdict. (*People v. Watson* (1956) 46 Cal.2d 818, 836-837.)

1. *The evidentiary ruling*

The trial court abused its discretion in excluding defendant's post-arrest statement. Defendant and the People disagree over whether that statement is hearsay or not. As is pertinent here, an out-of-court statement is "hearsay" only if it is "offered to prove the truth of the matter stated." (Evid. Code, § 1200, subd. (a).) Defendant argues that he was not seeking to admit his post-arrest statement for its truth (namely, that he was a secret governmental operative on a training mission) but rather as circumstantial evidence of his state of mind (namely, that he was delusional). (*People v. Ortiz* (1995) 38 Cal.App.4th 377, 390 (*Ortiz*) ["a statement which does not directly declare a mental state, but is merely circumstantial evidence of that state of mind, is not hearsay"].) The People counter that defendant's post-arrest statement was being proffered for its truth because it only supported defendant's mental defect defense if defendant truly believed he was a governmental operative on a training mission. (See *People v. Hopson* (2017) 3 Cal.5th 424, 432 [to be

nonhearsay, a "statement must be capable of serving its nonhearsay purpose regardless of whether the jury believes the matters asserted to be true"]; *People v. Whitt* (1990) 51 Cal.3d 620, 643, fn. 13 ["statements recounting past events are an implicit expression of the declarant's belief . . . that such events occurred"].)

We need not resolve this threshold question because the trial court erred in excluding the statement whether it was nonhearsay or hearsay.

If it was nonhearsay, the statement by definition falls outside the hearsay rule and should not have been excluded on that ground. (*Ortiz*, *supra*, 38 Cal.App.4th at p. 390.)

If it was hearsay, the statement falls within the state of mind hearsay exception. That exception applies to "a statement of the declarant's then existing state of mind" when "offered to prove the declarant's state of mind . . . at [a] time when [that state of mind] is itself an issue in the action." (Evid. Code, § 1250, subd. (a)(1).) Defendant's post-arrest statement was a "statement of his then existing" state of mind (namely, that he was delusional) and was offered to support his mental defect defense that, if accepted, would negate the specific intent elements of the felony evasion count (namely, that he "intend[ed] to evade the officer" and that he "drove with willful or wanton disregard for the safety of persons or property" because he was "aware that his . . . actions present[ed] a substantial and unjustifiable risk of harm."[3] To be sure, the state of mind

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[3] It is possible to prove felony evasion without the second specific intent element as set forth above (Veh. Code, § 2800.2),

exception will not be applied "if the statement was made under circumstances such as to indicate its lack of trustworthiness." (Evid. Code, § 1252.) But here defendant's post-arrest statement was trustworthy because it largely echoed the statements defendant made to his sister and one of his college teachers in the days and months prior to January 2017. Those pre-January 2017 statements are themselves trustworthy because they were statements to friends or family made when defendant had no motive to lie (*People v. Karis* (1988) 46 Cal.3d 612, 635 [noting that such statements are trustworthy]), and those statements corroborate one another as well as defendant's post-arrest statement (*People v. Lancaster* (2007) 41 Cal.4th 50, 83 [corroborated statements are more trustworthy]). What is more, the transcript of defendant's post-arrest statement vividly illustrates that defendant did not offer up his delusional statement freely; to the contrary, defendant tried to invoke his right to remain silent, and the interviewing officers would not take "no" for an answer. Defendant's reluctance to speak is another badge that the statement eventually drawn out of him was trustworthy.

The People urge that defendant's post-arrest statement was not trustworthy because over an hour elapsed between the time of his arrest and his post-arrest statement and because defendant made no "odd" or "bizarre" statements during that time, such that defendant had ample time to concoct an untrustworthy story. We are unpersuaded because this argument ignores that defendant made similar delusional statements to his sister and

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but the jury was instructed on a second specific intent element, and the People have not objected to that instruction.

teacher before the date of the crimes; these prior statements would seem to foreclose the notion that defendant made up his story "on the spot."

2. *Prejudice*

The exclusion of defendant's post-arrest statement was prejudicial to the felony evasion count. As noted above, defendant's delusional mental state was a defense to the two specific intent elements of the felony evading count. (E.g., *People v. Schumacher* (1961) 194 Cal.App.2d 335; CALCRIM No. 2181; Pen. Code, § 28, subd. (a) ["Evidence of mental disease [or] mental defect . . . is admissible . . . on the issue of whether or not the accused actually formed a required specific intent."].) Defendant testified that he labored under the delusion that he was participating in a training exercise for a secret government agency at the time he took the cars and evaded law enforcement, but did not clearly articulate that the victims and bystanders were "in on it" and thus in no real danger. Whether defendant was being truthful in his testimony was critical to his defense. Although his sister and teacher testified that defendant had made similar delusional remarks prior to the day he committed these acts in January 2017, defendant's own post-arrest statement—made almost immediately after his arrest and that mirrored his pre-crime statements—would have been especially powerful evidence corroborating and clarifying his trial testimony. (E.g., *People v. Torres* (1964) 61 Cal.2d 264, 267-268 [exclusion of evidence corroborating the defendant's testimony was prejudicial].) The prejudice flowing from the absence of this corroborative and clarifying evidence was only exacerbated by the prosecutor's closing argument that capitalized on the court's exclusionary ruling. Although the trial court had specifically and

repeatedly told the prosecutor that it would not be "fair" for the prosecutor to ignore the existence of defendant's post-arrest statement by arguing that defendant had "had a year to think about" (and hence to concoct) a mental defect defense, the prosecutor ignored the court's ruling and did just that: She argued that defendant had "never said anything to anybody on th[e] day" of his arrest about being on a secret government "mission." Defendant objected, but the court declined to enforce its prior order, saying only, "Be careful on the 402 rulings." Where, as here, the court excludes critical corroborative evidence and the prosecutor violates a court order by capitalizing on that exclusion in a way that ignores the actual facts, the exclusion is prejudicial.

The People offer one further argument in response. The jury's acquittal of the carjacking and attempted carjacking counts, the People begin, necessarily rested on its acceptance of defendant's mental defect defense. Because the jury still found defendant guilty of evading the police, the People continue, additional evidence bearing on that defense (namely, defendant's post-arrest statement) is harmless because its admission would not, with reasonable probability, lead to a different verdict. This argument overlooks that defendant's post-arrest statement--unlike his trial testimony--specifically recounted defendant's belief that the motorists and pedestrians he encountered were all "in on it" (and hence not, in his view, at risk of harm). Exclusion of the post-arrest statement therefore kept from the jury evidence of defendant's belief regarding the risk to the bystanders of his evasion, such that the jury's rejection of the mental health defense as to the evading count at the first trial does not portend

it is reasonably probable it would do the same had the post-arrest statement been admitted.

DISPOSITION

The judgment is reversed and remanded for the trial court to consider whether to reduce the conviction to the lesser included offense of misdemeanor evasion or to set the case for retrial.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
HOFFSTADT

We concur:

_____, Acting P.J.
ASHMANN-GERST

_____, J.
CHAVEZ